

BILL ANALYSIS

Senate Research Center

H.B. 867
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Criminal Justice
5/19/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The sex offender registration statute has become too cumbersome and difficult to manage. As a result the speaker of the house of representatives called for a select interim study to examine Chapter 62 and determine what changes, if any, are needed to streamline, simplify, and clarify the provisions.

H.B. 867 establishes a better, more user-friendly framework to reorganize the chapter. H.B. 867 also makes several substantive changes, including making the newspaper notice requirement optional, allowing registrants who do not have a permanent address to report weekly to their primary authority. H.B. 867 also allows for a deregistration process for registrants who are Wetterling compliant but were required to register under Texas law. These persons will have to undergo a risk assessment review at their expense and then get a hearing from the sentencing judge who will decide whether they should be deregistered.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Criminal Justice in SECTION 1.01 (Article 62.010, Code of Criminal Procedure) of this bill.

Rulemaking authority is expressly granted to the Texas Youth Commission in SECTION 1.01 (Article 62.010, Code of Criminal Procedure) of this bill.

Rulemaking authority is expressly granted to the Texas Juvenile Probation Commission in SECTION 1.01 (Article 62.010, Code of Criminal Procedure) of this bill.

Rulemaking authority is expressly granted to the Texas Department of Public Safety in SECTION 1.01 (Article 62.010, Code of Criminal Procedure) and SECTION 1.05 (Section 411.1473, Government Code) of this bill.

Rulemaking authority is expressly granted to the Council on Sex Offender Treatment in SECTION 1.01 (Article 62.402 and 62.403, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. SEX OFFENDER REGISTRATION REQUIREMENTS

SECTION 1.01. Reenacts and amends Chapter 62, Code of Criminal Procedure, as follows:

CHAPTER 62. SEX OFFENDER REGISTRATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS.

Art. 62.001. DEFINITIONS. Redesignated from existing text of Article 62.01. Redefines "reportable conviction or adjudication" and "residence" and defines "extrajurisdictional registrant."

Art. 62.002. APPLICABILITY OF CHAPTER. Provides that this chapter applies only to a reportable conviction or adjudication occurring on or after September 1, 1970. Provides that, except as provided by Subsection (c), the duties imposed on a person required to register under this chapter on the basis of a reportable conviction or

adjudication, and the corresponding duties and powers of other entities in relation to the person required to register on the basis of that conviction or adjudication, are not affected by an appeal of the conviction or adjudication or a pardon of the conviction or adjudication. Provides that, if a conviction or adjudication that is the basis of a duty to register under this chapter is set aside on appeal by a court or if the person required to register under this chapter on the basis of a conviction or adjudication receives a pardon on the basis of subsequent proof of innocence, the duties imposed on the person by this chapter and the corresponding duties and powers of other entities in relation to the person are terminated.

Art. 62.003. DETERMINATION REGARDING SUBSTANTIALLY SIMILAR ELEMENTS OF OFFENSE. Redesignated from existing text of Article 62.0101. Requires the Texas Department of Public Safety (DPS), annually, to provide or make available certain information to each prosecuting attorney's office in this state. Makes nonsubstantive changes.

Art. 62.004. DETERMINATION REGARDING PRIMARY REGISTRATION AUTHORITY. Redesignated from existing text of Article 62.0102. Requires DPS, for each person subject to registration under this chapter, to determine which local law enforcement authority serves as the person's primary registration authority as provided by Article 62.152, rather than 62.061, as added by Chapters 1193 and 1415, Acts of the 76th Legislature, Regular Session, 1999.

Art. 62.005. CENTRAL DATABASE; PUBLIC INFORMATION. (a) Requires DPS to maintain a computerized central database containing the information required for registration under this chapter. Authorizes DPS to include in the computerized central database the numeric risk level assigned to a person under this chapter.

(b) Provides that the information contained in the database, including the numeric risk level assigned to a person under this chapter, is public information, with the exception of specific information.

(c) Requires DPS, notwithstanding Chapter 730 (Motor Vehicle Records Disclosure Act), Transportation Code, to maintain in the database, and to post on any DPS website related to the database, any photograph of the person that is available through the process for obtaining or renewing a personal identification certificate or driver's license under Section 521.103 or 521.272, Transportation Code. Requires DPS to update the photograph in the database and on the website annually or as the photograph otherwise becomes available through the renewal process for the certificate or license.

(d) Requires a local law enforcement authority to release public information described under Subsection (b) to any person who requests the information from the authority. Authorizes the authority to charge the person a fee not to exceed the amount reasonably necessary to cover the administrative costs associated with the authority's release of information to the person under this subsection.

(e) Requires DPS to provide a licensing authority with notice of any person required to register under this chapter who holds or seeks a license that is issued by the authority. Requires DPS to provide the notice required by this subsection as the applicable licensing information becomes available through the person's registration or verification of registration.

(f) Requires DPS, on the written request of a licensing authority that identifies an individual and states that the individual is an applicant for or a holder of a license issued by the authority, to release any information described by Subsection (a) to the licensing authority.

(g) Defines "license" and "licensing authority," for the purposes of Subsections (e) and (f).

(h) Requires DPS, not later than the third day after the date on which the applicable information becomes available through the person's registration or verification of registration or under Article 62.058, to send notice of any person required to register under this chapter who is or will be employed, carrying on a vocation, or a student at a public or private institution of higher education in this state, to certain authorities, for an institution in this state, and to any existing authority for campus security at the institution, for an institution in another state.

(i) Requires DPS, on the written request of an institution of higher education described by Subsection (h) that identifies an individual and states that the individual has applied to work or study at the institution, to release any information described by Subsection (a) to the institution.

Art. 62.006. INFORMATION PROVIDED TO PEACE OFFICER ON REQUEST. Requires DPS to establish a procedure by which a peace officer or employee of a law enforcement agency who provides DPS with a driver's license number, personal identification certificate number, or license plate number is automatically provided information as to whether the person to whom the driver's license or personal identification certificate is issued is required to register under this chapter or whether the license plate number is entered into the computerized central database under Article 62.005 as assigned to a vehicle owned or driven by a person required to register under this chapter.

Art. 62.007. RISK ASSESSMENT REVIEW COMMITTEE; SEX OFFENDER SCREENING TOOL. (a) Requires the Texas Department of Criminal Justice (TDCJ) to establish a risk assessment review committee (review committee) composed of at least seven members, each of whom serves on the review committee in addition to the member's other employment-related duties. Sets forth guidelines for the composition of the review committee.

(b) Provides that the review committee functions in an oversight capacity. Sets forth the duties of the review committee.

(c) Requires the sex offender screening tool required to be used in determining the level of risk of a person subject to registration under this chapter to use an objective point system under which a person is assigned a designated number of points for each of various factors. Requires the review committee, in developing or selecting the sex offender screening tool, to use or select a screening tool that may be adapted to use specific guidelines.

(d) Authorizes the review committee, TDCJ, the Texas Youth Commission (TYC), or a court to override a risk level only if the entity believes that the risk level assessed is not an accurate prediction of the risk the offender poses to the community and documents the reason for the override in the offender's case file.

(e) Requires records and files, including records that have been sealed under Section 58.003, Family Code, relating to a person for whom a court, TDCJ, or TYC is required under this article to determine a level of risk, notwithstanding Chapter 58 (Records; Juvenile Justice Information System), Family Code, to be released to the court, TDCJ, or TYC, as appropriate, for the purpose of determining the person's risk level.

(f) Provides that Chapter 551 (Open Meetings), Government Code, does not apply to a meeting of the risk assessment review committee.

(g) Provides that the numeric risk level assigned to a person using the sex offender screening tool described by this article is not confidential and is subject to disclosure under Chapter 552 (Public Information), Government Code.

Art. 62.008. GENERAL IMMUNITY. Provides that certain persons are immune from liability under this chapter.

Art. 62.009. IMMUNITY FOR RELEASE OF PUBLIC INFORMATION. Authorizes DPS, a penal institution, a local law enforcement authority, or an authority for campus security to release to the public information regarding a person required to register under this chapter only if the information is public information under this chapter. Provides that an individual, agency, entity, or authority is not liable under Chapter 101 (Tort Claims), Civil Practice and Remedies Code, or any other law for damages arising from conduct authorized by this section. Provides that, for purposes of determining liability, the release or withholding of information by an elected or appointed officer of an agency, entity, or authority is a discretionary act. Authorizes a private primary or secondary school, public or private institution of higher education, or administrator of a private primary or secondary school or public or private institution of higher education to release to the public information regarding a person required to register under this chapter only if the information is public information under this chapter and is released to the administrator under Article 62.005, 62.053, 62.054, 62.055, or 62.153. Provides that a private primary or secondary school, public or private institution of higher education, or administrator of a private primary or secondary school or public or private institution of higher education is not liable under any law for damages arising from conduct authorized by this section.

Art. 62.010. RULEMAKING AUTHORITY. Authorizes TDCJ, TYC, the Texas Juvenile Probation Commission, and DPS to adopt any rule necessary to implement this chapter.

SUBCHAPTER B. REGISTRATION AND VERIFICATION REQUIREMENTS; RELATED NOTICE

Deletes existing text of Articles 62.0105 and 62.011.

Art. 62.051. New heading: REGISTRATION: GENERAL. (a) Redesignated from existing text of Article 62.02. Requires a person to satisfy the requirements of this subsection not later than the later of the seventh day after the person's arrival in the municipality or county or the first date the local law enforcement authority of the municipality or county by policy allows the person to register or verify registration as applicable. Makes a nonsubstantive change.

- (b) Redesignates part of this subsection as Subsection (c).
- (c) Creates part of this subsection from existing text of Subsection (b). Makes a nonsubstantive change.
- (d) Requires the registration form to contain a statement and description of any registration duties the person has or may have under this chapter.
- (e) Redesignated from existing text of Subsection (c).
- (f) Redesignated from existing text of Subsection (d).
- (g) Redesignated from existing text of Subsection (e). Makes a nonsubstantive change.
- (h) Redesignated from existing text of Subsection (f).
- (i) Redesignated from existing text of Subsection (g).

Art. 62.052. New heading: REGISTRATION: EXTRAJURISDICTIONAL REGISTRANTS. Redesignated from existing text of Article 62.021. Deletes existing text which sets forth the persons to whom this article applies. Sets forth registration and verification requirements for an extrajurisdictional registrant. Makes nonsubstantive changes.

Art. 62.053. PRERELEASE NOTIFICATION. Redesignated from existing text of Article 62.03. Amends the specific prerelease requirements for an official of a penal institution. Makes nonsubstantive changes.

Deletes existing text relating to the publication of notice in a newspaper of greatest paid circulation. Deletes existing text of Article 62.031 relating to restrictions on the information included in the newspaper notice. Deletes existing text relating to the recovery of certain costs of the publication of notice.

Art. 62.054. CIRCUMSTANCES REQUIRING NOTICE TO SUPERINTENDENT OR SCHOOL ADMINISTRATOR. Redesignated from existing text of Article 62.032. Makes nonsubstantive changes.

Deletes existing text of Article 62.035, relating to the risk assessment review committee and sex offender screening tool.

Art. 62.055. CHANGE OF ADDRESS. Redesignated from existing text of Art. 62.04. Amends the specific requirements for a person required to registration under this chapter who has changed address. Makes conforming changes.

Deletes existing text of Article 62.041, relating to the authority of a political subdivision to collect costs of certain notice.

Art. 62.056. ADDITIONAL PUBLIC NOTICE FOR CERTAIN OFFENDERS. Redesignated from existing text of Article 62.045. Requires DPS, if a person who is released or who moves is assigned a risk level of three, to provide written notice mailed or delivered to at least each address, rather than residential address, other than a post office box, within a one-mile radius, within a certain number of days after the person is released or moves. Authorizes a local law enforcement authority, upon receipt of notice under this chapter that a person subject to registration under this chapter is required to register or verify registration with the authority and has been assigned a risk level of three, to provide notice to the public in the manner determined appropriate by the authority, including publishing notice in a newspaper or other periodical or circular in circulation in the area where the person intends to reside.

Deletes existing text of Article 62.0451, relating to additional public notice for individuals subject to civil commitment.

Art. 62.057. New heading: STATUS REPORT BY SUPERVISING OFFICER OR LOCAL LAW ENFORCEMENT AUTHORITY. Redesignated from existing text of Article 62.05. Makes nonsubstantive changes.

Art. 62.058. LAW ENFORCEMENT VERIFICATION OF REGISTRATION INFORMATION. Redesignated from existing text of Article 62.06.

Deletes existing text of Article 62.061, relating to verification of individuals subject to commitment.

Art. 62.059. REGISTRATION OF PERSONS REGULARLY VISITING LOCATION. Redesignated from existing text of Article 62.062. Makes a nonsubstantive change.

Deletes existing text of Article 62.063, relating to registration of certain workers or students, and Article 62.064, relating to registration of certain workers or students at institutions of higher education.

Art. 62.060. REQUIREMENTS RELATING TO DRIVER'S LICENSE OR PERSONAL IDENTIFICATION CERTIFICATE. Redesignated from existing text of Article 62.065. Makes a nonsubstantive change.

Art. 62.061. DNA SPECIMEN. Requires a person required to register under this chapter to comply with a request for a DNA specimen made by a law enforcement agency under Section 411.1473, Government Code.

Art. 62.062. LIMITATION ON NEWSPAPER PUBLICATION. Prohibits a local law enforcement agency, except as provided by this article, from publishing notice in a newspaper or other periodical or circular concerning a person's registration under this chapter if the only basis on which the person is subject to registration is one or more adjudications of delinquent conduct. Provides that this article does not apply to a publication of notice under Article 62.056.

Art. 62.063. CERTAIN PERSONS PROHIBITED FROM RESIDING NEAR SCHOOL. Sets forth the persons to whom this article applies. Prohibits a person to whom this article applies from residing within 1,000 feet of a public or private school campus, as measured in a straight line from the nearest property line of the residence to the nearest property line of the campus. Authorizes a person to whom this article applies who resides within 1,000 feet of a school campus to remain at the person's residence if the person resided at the residence on September 1, 2005, or the person is residing at the residence at the time that the campus is established or extended to within 1,000 feet of the residence. Requires the state, county, or local law enforcement agency with the primary responsibility for registering or supervising such persons to provide written notice, including the person's address and a recent photograph of the person, to the appropriate public or private school campus not later than the first day of instruction of each school year. Provides that a person to whom this article applies commits an offense if the person violates this article. Provides that the punishment for an offense under this subsection is a felony of the third degree and is considered to be a conviction of an offense under Article 62.102 for purposes of enhancement under Subsection (c) of that article.

SUBCHAPTER C. EXPIRATION OF DUTY TO REGISTER; GENERAL PENALTIES FOR NONCOMPLIANCE

Art. 62.101. EXPIRATION OF DUTY TO REGISTER. Provides that, except as provided by this article and Subchapter I, the duty to register for a person ends when the person dies if the person has a reportable conviction or adjudication, other than an adjudication of delinquent conduct, for certain offenses. Provides that, except as provided by Subchapter I, the duty to register for a person otherwise subject to this section ends on the 10th anniversary of the date on which the person is released from a penal institution or discharges community supervision of the court dismisses the criminal proceedings against the person and discharges the person, whichever date is later, if the person's duty to register is based on a conviction or an order of deferred adjudication in a cause that was transferred to a district court or criminal district court under Section 54.02, Family Code. Provides that, except as provided by Subchapter I, the duty to register for a person with a reportable conviction or adjudication for an offense other than those specific offenses described by this section ends, if the person's duty to register is based on an adjudication of delinquent conduct, on the 10 anniversary of the date on which the disposition is made or the person completes the terms of the disposition, whichever date is later, or, if the person's duty to register is based on a conviction or an order of deferred adjudication, on the 10 anniversary of the date on which the court dismisses the criminal proceedings against the person and discharges the person, the person is released from a penal institution, or the person discharges community supervision, whichever date is later.

Deletes existing text of Article 62.07, relating to remedies related to public notice, Article 62.08, relating to public information maintained in a central database, Article 62.085, relating to information provided to a peace officer, Article 62.09, relating to immunity for release of public information, and Article 62.091, relating to general immunity.

Art. 62.102. FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS. Redesignated from existing text of Article 62.10. Provides that, if it is shown at the trial of a person for an attempt to commit an offense under this article that the person has previously attempted to commit an offense under this article, the punishment for the

attempt to commit the offense is increased to the punishment for the next highest degree of felony. Makes nonsubstantive changes.

SUBCHAPTER D. PROVISIONS APPLICABLE TO CERTAIN WORKERS AND STUDENTS

Art. 62.151. DEFINITIONS. Provides that, for purposes of this subchapter, a person is employed or carries on a vocation if the person works or volunteers on a full-time or part-time basis for a consecutive period exceeding 14 days or for an aggregate period exceeding 30 days in a calendar year, works regardless of whether the person works for compensation or for governmental or educational benefit, and is a student if the person enrolls on a full-time or part-time basis in any educational facility, including a public or private primary or secondary school, including a high school or alternative learning center or a public or private institution of higher education.

Art. 62.152. REGISTRATION OF CERTAIN WORKERS OR STUDENTS. (a) Provides that certain persons are subject to this subchapter and, except as otherwise provided by this article, to the other subchapters of this chapter.

(b) Provides that a person described by Subsection (a) is subject to the registration and verification requirements of Articles 62.051 and 62.058 and to the change of address requirements of Article 62.055, except that the registration and verification and the reporting of a change of address are based on the municipality or county in which the person works or attends school. Provides that the person is subject to the school notification requirements of Articles 62.053-62.055, except that notice provided to the superintendent and any administrator is based on the public school district in which the person works or attends school.

(c) Provides that a person described by Subsection (a) is not subject to Article 62.101.

(d) Provides that the duty to register for a person described by Subsection (a) ends when the person no longer works or studies in this state, provides notice of that fact to the local law enforcement authority in the municipality or county in which the person works or attends school, and receives notice of verification of that fact from the authority. Requires the authority to verify that the person no longer works or studies in this state and to provide to the person notice of that verification within a reasonable time.

(e) Provides that, notwithstanding Subsection (a), this article does not apply to a person who has a reportable conviction or adjudication, who resides in another state, and who is employed, carries on a vocation or is a student in this state if the person establishes another residence in this state to work or attend school in this state. Provides that the person does remain subject to the other articles of this chapter based on that person's residence in this state.

Art. 62.153. REGISTRATION OF WORKERS OR STUDENTS AT INSTITUTIONS OF HIGHER EDUCATION. (a) Requires a person required to register under Article 62.152 or any other provision of this chapter who is employed, carries on a vocation, or is a student at a public or private institution of higher education in this state, not later than the later of the seventh day after the date on which the person begins to work or attend school or the first date the applicable authority by policy allows the person to register, to report that fact to certain authorities.

(b) Requires a person described by Subsection (a) to provide the authority for campus security or the local law enforcement authority with all information the person is required to provide under Article 62.051(c).

(c) Requires a person described by Subsection (a) to notify the authority for campus security or the local law enforcement authority not later than the seventh

day after the date of termination of the person's status as a worker or student at the institution.

(d) Requires the authority for campus security or the local law enforcement authority to promptly forward to the administrative office of the institution any information received from the person under this article and any information received from the department under Article 62.005.

(e) Provides that Subsection (a)(2) does not require a person to register with a local law enforcement authority if the person is otherwise required by this chapter to register with that authority.

(f) Provides that this article does not impose the requirements of public notification or notification to public or private primary or secondary schools on an authority for campus security or a local law enforcement authority, if those requirements relate to a person about whom the authority is not otherwise required by this chapter to make notifications.

(g) Provides that, notwithstanding Article 62.059, the requirements of this article supersede those of Article 62.059 for a person required to register under both this article and article 62.059.

SUBCHAPTER E. PROVISIONS APPLICABLE TO PERSONS SUBJECT TO CIVIL COMMITMENT

Art. 62.201. ADDITIONAL PUBLIC NOTICE FOR INDIVIDUALS SUBJECT TO CIVIL COMMITMENT. (a) Requires DPS, on receipt of notice under this chapter that a person subject to registration who is civilly committed as a sexually violent predator is due to be released from a penal institution or intends to move to a new residence in this state, to, not later than the seventh day after the date on which the person is released or the seventh day after the date on which the person moves, provide written notice mailed or delivered to at least each address, other than a post office box, within a one-mile radius, in an area that has been subdivided, of the place where the person intends to reside.

(b) Requires DPS to provide the notice in English and Spanish and to include in the notice any information that is public information under this chapter.

(c) Requires DPS to establish procedures for a person with respect to whom notice is provided under this article to pay to DPS all costs incurred by DPS in providing the notice. Requires the person to pay those costs in accordance with the procedures established under this subsection.

(d) Provides that DPS's duty to provide notice under this article in regard to a particular person ends on the date on which a court releases the person from all requirements of the civil commitment process.

Art. 62.202. VERIFICATION OF INDIVIDUALS SUBJECT TO COMMITMENT. Requires an individual subject to registration under this chapter who is civilly committed as a sexually violent predator, notwithstanding Article 62.058, to report to the local law enforcement authority designated as the person's primary registration authority by DPS not less than once in each 30-day period following the date the person first registered under this chapter to verify the information in the registration form maintained by the authority for that person. Provides that, for purposes of this article, a person complies with a requirement that the person register within a 30-day period following a date if the person registers at any time on or after the 27th day following that date but before the 33rd date after that date. Provides that, on the date a court releases a person described by this article from all requirements of the civil commitment process, the person's duty to verify registration as a sex offender is no longer imposed by this article and the person is required to verify registration as provided by Article 62.058.

Art. 62.203. FAILURE TO COMPLY: INDIVIDUALS SUBJECT TO COMMITMENT. Redesignated from existing text of Article 62.101. Makes a nonsubstantive change.

SUBCHAPTER F. REMOVAL OF REGISTRATION INFORMATION

Deletes existing text of Article 62.11, relating to the applicability of this chapter, Article 62.12, relating to the expiration of a duty to register, and Article 62.13, relating to a hearing to determine need for registration of a juvenile.

Art. 62.251. New heading: REMOVING REGISTRATION INFORMATION WHEN DUTY TO REGISTER EXPIRES. Redesignated from existing text of Article 62.141. Requires DPS, when a person is no longer required to register as a sex offender under this chapter, rather than for an adjudication of delinquent conduct, to remove all information about the person from the sex offender registry. Makes conforming changes.

SUBCHAPTER G. EXEMPTION FROM REGISTRATION FOR CERTAIN YOUNG ADULT SEX OFFENDERS

Art. 62.301. EXEMPTION FROM REGISTRATION FROM CERTAIN YOUNG ADULT SEX OFFENDERS. (a) Authorizes a person required to register under this chapter, if eligible under Subsection (b) or (c), to petition the court having jurisdiction over the case for an order exempting the person from registration under this chapter at any time after the person's sentencing or after the person is placed on deferred adjudication community supervision.

(b) Provides that a person is eligible to petition the court as described by Subsection (a) if the person is required to register only as a result of a single reportable conviction or adjudication, other than an adjudication of delinquent conduct, and the court has entered in the appropriate judgment or has filed with the appropriate papers a statement of an affirmative finding described by Article 42.017 or Section 5(g), Article 42.12.

(c) Provides that a defendant who before September 1, 2001, is convicted of or placed on deferred adjudication community supervision for an offense under Section 21.11 (Indecency With A Child), 22.011 (Sexual Assault), 22.021 (Aggravated Sexual Assault), or 43.25 (Sexual Performance by a Child), Penal Code, is eligible to petition the court as described by Subsection (a). Authorizes the court to consider the petition only if the petition states and the court finds that the defendant would have been entitled to the entry of an affirmative finding under Article 42.017 or Section 5(g), Article 42.12, as appropriate, had the conviction or placement on deferred adjudication community supervision occurred after September 1, 2001.

(d) Authorizes the court, after a hearing on the petition described by Subsection (a), to issue an order exempting the person from registration under this chapter if it appears by a preponderance of the evidence as presented by a registered sex offender treatment provider, that the exemption does not threaten public safety and that the person's conduct did not occur without the consent of the victim or intended victim as described by Section 22.011(b) (Sexual Assault), Penal Code.

(e) Provides that an order exempting the person from registration under this chapter does not expire, but requires the court to withdraw the order if after the order is issued the person receives a reportable conviction or adjudication under this chapter.

SUBCHAPTER H. EXEMPTIONS FROM REGISTRATION FOR CERTAIN JUVENILES

Art. 62.351. MOTION AND HEARING GENERALLY. Requires the juvenile court on motion of the respondent, during or after disposition of a case under Section 54.04 (Disposition Hearing), Family Code, for adjudication of an offense for which registration

is required under this chapter, to conduct a hearing to determine whether the interests of the public require registration under this chapter. Authorizes the motion to be filed and the hearing held regardless of whether the respondent is under 18 years of age. Requires notice of the motion and hearing to be provided to the prosecuting attorney. Provides that the hearing is without a jury and the burden of persuasion is on the respondent to show by a preponderance of evidence that the criteria of Article 62.352(a) have been met. Authorizes the court at the hearing to make its determination based on certain factors and information. Requires all written matter considered by the court to be disclosed to all parties as provided by Section 54.04(b), Family Code. Prohibits the court, if a respondent, as part of a plea agreement, promises not to file a motion seeking an order exempting the respondent from registration under this chapter, from recognizing a motion filed by a respondent under this article.

Art. 62.352. ORDER GENERALLY. (a) Requires the court to enter an order exempting a respondent from registration under this chapter if the court makes certain determinations.

(b) Authorizes the juvenile court, after a hearing under Article 62.351 or under a plea agreement described by Article 62.355(b), to enter an order deferring decision on requiring registration under this chapter until the respondent has completed treatment for the respondent's sexual offense as a condition of probation or while committed to TYC or requiring the respondent to register as a sex offender but providing that the registration information is not public information and is restricted to use by law enforcement and criminal justice agencies, the Council on Sex Offender Treatment, and public or private institutions of higher education.

(c) Provides that, if the court enters an order described by this section, the court retains discretion and jurisdiction to require, or exempt the respondent from, registration under this chapter at any time during the treatment or on the successful or unsuccessful completion of treatment, except that during the period of deferral, registration may not be required. Provides that, following successful completion of treatment, the respondent is exempted from registration under this chapter unless a hearing under this subchapter is held on motion of the state, regardless of whether the respondent is 18 years of age or older, and the court determines the interests of the public require registration. Requires the treatment provider, not later than the 10th day after the date of the respondent's successful completion of treatment, to notify the juvenile court and prosecuting attorney of the completion.

(d) Prohibits information that is the subject of an order described by Subsection (b)(2) may not be posted on the Internet or released to the public.

Art. 62.353. MOTION, HEARING, AND ORDER CONCERNING PERSON ALREADY REGISTERED. (a) Authorizes a person who has registered as a sex offender for an adjudication of delinquent conduct, regardless of when the delinquent conduct or the adjudication for the conduct occurred, to file a motion in the adjudicating juvenile court for a hearing seeking exemption from registration under this chapter as provided by Article 62.351 or an order under Article 62.352(b)(2) that the registration become nonpublic.

(b) Authorizes the person to file a motion under Subsection (a) in the original juvenile case regardless of whether the person, at the time of filing the motion, is 18 years of age or older. Requires notice of the motion to be provided to the prosecuting attorney. Requires a hearing on the motion to be provided as in other cases under this subchapter.

(c) Authorizes only one subsequent motion to be filed under Subsection (a) if a previous motion under this article has been filed concerning the case.

(d) Requires the motion under Subsection (a), to the extent feasible, to identify those public and private agencies and organizations, including public or private institutions of higher education, that possess sex offender registration information about the case.

(e) Authorizes the juvenile court, after a hearing, to deny a motion filed under Subsection (a) or grant a motion described by Subsection (a).

(f) Requires the clerk of the court, if the court grants a motion filed under Subsection (a), to, by certified mail, return receipt requested, send a copy of the order to the department, to each local law enforcement authority that the person has proved to the juvenile court has registration information about the person, and to each public or private agency or organization that the person has proved to the juvenile court has information about the person that is currently available to the public with or without payment of a fee. Requires the clerk of the court to, by certified mail, return receipt requested, send a copy of the order to any other agency or organization designated by the person. Requires the person identify the agency or organization and its address and pay a fee of \$20 to the court for each agency or organization the person designates.

(g) Requires the clerk of the court, in addition to disseminating the order under Subsection (f), at the request of the person, by certified mail, return receipt requested, to send a copy of the order to each public or private agency or organization that at any time following the initial dissemination of the order under Subsection (f) gains possession of sex offender registration information pertaining to that person, if the agency or organization did not otherwise receive a copy of the order under Subsection (f).

(h) Requires an order under Subsection (f) to require the recipient to conform its records to the court's order either by deleting the sex offender registration information or changing its status to nonpublic, as applicable. Prohibits a public or private institution of higher education from being required to delete the sex offender registration information under this subsection.

(i) Requires a private agency or organization that possesses sex offender registration information the agency or organization obtained from a state, county, or local governmental entity to conform the agency's or organization's records to the court's order on or before the 30th day after the date of the entry of the order. Provides that, unless the agency or organization is a public or private institution of higher education, failure to comply in that period automatically bars the agency or organization from obtaining sex offender registration information from any state, county, or local governmental entity in this state in the future.

Art. 62.354. MOTION, HEARING, AND ORDER CONCERNING PERSON REQUIRED TO REGISTER BECAUSE OF OUT-OF-STATE ADJUDICATION. Authorizes a person required to register as a sex offender in this state because of an out-of-state adjudication of delinquent conduct to file in the juvenile court of the person's county of residence a petition under Article 62.351 for an order exempting the person from registration under this chapter. Authorizes a person, if the person is already registered as a sex offender in this state because of an out-of-state adjudication of delinquent conduct, to file in the juvenile court of the person's county of residence a petition under Article 62.353 for an order removing the person from sex offender registries in this state. Requires the juvenile court, on receipt of a petition under this article, to conduct a hearing and make rulings as in other cases under this subchapter. Provides that an order entered under this article requiring removal of registration information applies only to registration information derived from registration in this state.

Art. 62.355. WAIVER OF HEARING. Authorizes the prosecuting attorney to waive the state's right to a hearing under this subchapter and agree that registration under this chapter is not required. Requires a waiver under this subsection must state whether the waiver is entered under a plea agreement. Requires the court, without a hearing, if the

waiver is entered under a plea agreement, to enter an order exempting the respondent from registration under this chapter or under Section 54.03(j) (Adjudication Hearing), Family Code, inform the respondent that the court believes a hearing under this article is required and give the respondent the opportunity to withdraw the respondent's plea of guilty, nolo contendere, or true or affirm the respondent's plea and participate in the hearing. Requires the court, without a hearing, if the waiver is entered other than under a plea agreement, the court, without a hearing, to enter an order exempting the respondent from registration under this chapter.

Art. 62.356. EFFECT OF CERTAIN ORDERS. Provides that a person who has an adjudication of delinquent conduct that would otherwise be reportable under Article 62.001(5) does not have a reportable adjudication of delinquent conduct for purposes of this chapter if the juvenile court enters an order under this subchapter exempting the person from the registration requirements of this chapter. Prohibits the respondent, if the juvenile court enters an order exempting a person from registration under this chapter, from being required to register in this or any other state for the offense for which registration was exempted.

Art. 62.357. APPEAL OF CERTAIN ORDERS. (a) Authorizes the prosecuting attorney, notwithstanding Section 56.01, Family Code, on entry by a juvenile court of an order under Article 62.352(a) exempting a respondent from registration under this chapter, to appeal that order by giving notice of appeal within the time required under Rule 26.2(b), Texas Rules of Appellate Procedure. Provides that the appeal is civil and the standard of review in the appellate court is whether the juvenile court committed procedural error or abused its discretion in exempting the respondent from registration under this chapter. Provides that the appeal is limited to review of the order exempting the respondent from registration under this chapter and may not include any other issues in the case. Authorizes a respondent, under Section 56.01, Family Code, to appeal a juvenile court's order under Article 62.352(a) requiring registration in the same manner as the appeal of any other legal issue in the case. Provides that the standard of review in the appellate court is whether the juvenile court committed procedural error or abused its discretion in requiring registration.

SUBCHAPTER I. EARLY TERMINATION OF CERTAIN PERSONS' OBLIGATION TO REGISTER

Art. 62.401. DEFINITION. Defines "council."

Art. 62.402. DETERMINATION OF MINIMUM REQUIRED REGISTRATION PERIOD. Requires the Council on Sex Offender Treatment (council) by rule to determine the minimum required registration period under 42 U.S.C. Section 14071 (Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program) for each reportable conviction or adjudication under this chapter, if this state is to receive the maximum amount of federal money available to a state as described by that law. Requires the council, after determining the minimum required registration period for each reportable conviction or adjudication under this article, to compile and publish a list of reportable convictions or adjudications for which a person must register under this chapter for a period that exceeds the minimum required registration period under federal law. Requires the council, to the extent possible, to periodically verify with the Bureau of Justice Assistance or another appropriate federal agency the accuracy of the list of reportable convictions or adjudications described by this section.

Art. 62.403. INDIVIDUAL RISK ASSESSMENT. Requires the council by rule to establish, develop, or adopt an individual risk assessment tool or a group of individual risk assessment tools that meet specific requirements. Requires the council, on the written request of a person with a single reportable adjudication or conviction that appears on the list published under Article 62.402(b), to evaluate the person using the individual risk assessment tool or group of individual risk assessment tools established, developed, or adopted under this article and provide to the person a written report detailing the outcome of an evaluation conducted under this article. Provides that an

individual risk assessment provided to a person under this subchapter is confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code.

Art. 62.404. MOTION FOR EARLY TERMINATION. Authorizes a person required to register under this chapter who has requested and received an individual risk assessment under Article 62.403 to file with the trial court that sentenced the person for the reportable conviction or adjudication a motion for early termination of the person's obligation to register under this chapter. Requires a motion filed under this article to be accompanied by a written explanation of how the reportable conviction or adjudication giving rise to the movant's registration under this chapter qualifies as a reportable conviction or adjudication that appears on the list published under Article 62.402(b) and a certified copy of a written report detailing the outcome of an individual risk assessment evaluation conducted under Article 62.403(b)(1).

Art. 62.405. HEARING ON PETITION. Authorizes the court, after reviewing a motion filed with the court under Article 62.404, to deny without a hearing the movant's request for early termination or hold a hearing on the motion to determine whether to grant or deny the motion. Prohibits the court from granting a motion filed under Article 62.404 if the motion is not accompanied by the documents required under Article 62.404(b) or the court determines that the reportable conviction or adjudication for which the movant is required to register under this chapter is not a reportable conviction or adjudication for which the movant is required to register for a period that exceeds the minimum required registration period under federal law.

Art. 62.406. COSTS OF INDIVIDUAL RISK ASSESSMENT AND OF COURT. Provides that a person required to register under this chapter who files a motion for early termination of the person's registration obligation under this chapter is responsible for and is required to remit to the council and to the court, as applicable, all costs associated with and incurred by the council in providing the individual risk assessment or by the court in holding a hearing under this subchapter.

Art. 62.407. EFFECT OF ORDER GRANTING EARLY TERMINATION. Provides that, if, after notice to the person and to the prosecuting attorney and a hearing, the court grants a motion filed under Article 62.404 for the early termination of a person's obligation to register under this chapter, notwithstanding Article 62.101, the person's obligation to register under this chapter ends on the later of the date the court enters the order of early termination or the date the person has paid each cost described by Section 62.406. Requires all conditions of a person's parole, release to mandatory supervision, or community supervision, if the court grants a motion filed under Article 62.404 for the early termination of a person's obligation to register under this chapter, to be modified in accordance with the court's order.

Art. 62.408. NONAPPLICABILITY. Provides that this subchapter does not apply to a person without a reportable conviction or adjudication who is required to register as a condition of parole, release to mandatory supervision, or community supervision.

SECTION 1.02. Amends Chapter 13, Code of Criminal Procedure, by adding Article 13.30, as follows:

Art. 13.30. FAILURE TO COMPLY WITH SEX OFFENDER REGISTRATION STATUTE. Authorizes an offense under Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure, to be prosecuted in any county in which an element of the offense occurs, the county in which the person subject to Chapter 62 last registered, verified registration, or otherwise complied with a requirement of Chapter 62, the county in which the person required to register under Chapter 62 has indicated that the person intends to reside, or any county in which the person required to register under Chapter 62 is placed under custodial arrest for an offense subsequent to the person's most recent reportable conviction or adjudication under Chapter 62.

SECTION 1.03. Amends Article 26.13(h), Code of Criminal Procedure, to require the court to substantially comply with Subsection (a)(5). Provides that the failure of the court to comply with

Subsection (a)(5) is not a ground for the defendant to set aside the conviction, sentence, or plea. Deletes existing text requiring the court to ascertain certain facts.

SECTION 1.04. Amends Article 44.01, Code of Criminal Procedure, by adding Subsection (1), to provide that the state is entitled to appeal an order entered under Subchapter G or H, Chapter 62, that exempts a person from complying with the requirements of Chapter 62, and Subchapter I, Chapter 62, that terminates a person's obligation to register under Chapter 62.

SECTION 1.05. Amends Subchapter G, Chapter 411, Government Code, by adding Section 411.14773, as follows:

Sec. 411.1473. DNA RECORDS OF CERTAIN REGISTERED SEX OFFENDERS. Provides that this section applies only to a person who is required to register under Chapter 62, Code of Criminal Procedure. Requires DPS by rule to require a law enforcement agency serving as a person's primary registration authority under Chapter 62, Code of Criminal Procedure, to take one or more specimens from a person described by this section for the purpose of creating a DNA record and preserve the specimen and maintain a record of the collection of the specimen. Authorizes a law enforcement agency taking a specimen under this section to either send the specimen to the director of DPS (director) or send to the director an analysis of the specimen performed by a laboratory chosen by the agency and approved by the director. Provides that a law enforcement agency is not required to take and a person is not required to provide a specimen under this section if the person is required to and has provided a specimen under this chapter or other law.

SECTION 1.06. Amends Section 508.156, Government Code, to delete existing sex offender registration requirements under this section. Requires a parole panel to require as a condition of parole or mandatory supervision that a releasee required to register as a sex offender under Chapter 62, Code of Criminal Procedure and submit a blood sample or other specimen to DPS under Subchapter G, Chapter 411, for the purpose of creating a DNA record of the releasee, unless the releasee has already submitted the required specimen under other state law.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Amends Article 42.016, Code of Criminal Procedure, to make conforming changes.

SECTION 2.02. Amends Section 2(b), Article 42.22, Code of Criminal Procedure, to make conforming changes.

SECTION 2.03. Amends Article 60.051(f), Code of Criminal Procedure, to make a conforming change.

SECTION 2.04. Amends Section 12.120(a), Education Code, to make conforming changes.

SECTION 2.05. Amends Section 45.004(c), Family Code, to make a conforming change.

SECTION 2.06. Amends Section 45.103(c), Family Code, to make a conforming change.

SECTION 2.07. Amends Sections 54.051(g) and (h), Family Code, to make conforming changes.

SECTION 2.08. Amends Section 411.0091(b), Government Code, to make a conforming change.

SECTION 2.09. Amends Section 411.088(b), Government Code, to make a conforming change.

SECTION 2.10. Amends Section 109.001(2), Occupations Code, to make a conforming change.

SECTION 2.11. Amends Section 38.111(a), Penal Code, to make a conforming change.

SECTION 2.12. Amends Section 521.101(h), Transportation Code, to make conforming changes.

SECTION 2.13. Amends Section 521.103(a), Transportation Code, to make a conforming change.

SECTION 2.14. Amends Section 521.348(a), Transportation Code, to make conforming changes.

ARTICLE 3. TRANSITIONS; EFFECTIVE DATE; REPEALERS

SECTION 3.01. Makes application of this Act to Chapter 62, Code of Criminal Procedure, prospective.

SECTION 3.02. Makes application of this Act to Article 13.30, Code of Criminal Procedure, prospective.

SECTION 3.03. Makes application of this Act to Article 26.13(h), Code of Criminal Procedure, prospective.

SECTION 3.04. Makes application of this Act to Subsections (g) and (h), Section 19, Article 42.12, Code of Criminal Procedure, and Section 508.186, Government Code, prospective.

SECTION 3.05. Makes application of this Act to Article 44.01, Code of Criminal Procedure, prospective.

SECTION 3.06. Makes application of this Act to Section 411.1473, Government Code, prospective.

SECTION 3.07. Repealer: Subsections (g) and (h), Section 19 (Fees), Article 42.12, Code of Criminal Procedure.

SECTION 3.08. Effective date: September 1, 2005.